

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In Re: Methyl Tertiary Butyl Ether  
("MTBE")  
Products Liability Litigation**

**This document pertains to:**

*New Jersey Department of Environmental  
Protection, et al. v. Atlantic Richfield  
Company, et al.,*

Case No. 08-cv-00312

**Master File No.: 1:00-1898  
MDL 1358 (SAS)  
M21-88**

**REPLY TO GETTY PROPERTIES CORPORATION'S  
OPPOSITION TO THIRD PARTY DEFENDANT,  
H.P. DELTA, INC'S MOTION FOR SUMMARY JUDGMENT**

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On behalf of the Third Party  
Defendant, H.P. Delta, Inc.

Third-Party Defendant, H.P. Delta, Inc. (“H.P. Delta”), adopts by reference, relies upon, and incorporates the arguments, authorities, and evidence set forth in the brief and supporting documentation filed by Third-Party Defendant, Dhandi Transport, Inc. (“Dhandi”) in its reply brief in further support of its motion for summary judgment.

Summarily stated, Defendant, Getty Properties Corporation (“Getty”), has not met its burden of producing any evidence linking the alleged discharges at the H.P. Delta site to the off-site, Lancaster Road contamination. As noted in Dhandi’s moving brief, the expert offered by Plaintiff, the New Jersey Department of Environmental Protection (“NJDEP”), admitted that groundwater does not flow from the H.P. Delta site towards the Lancaster Road wells and, to the contrary, moves in directions that are incompatible with the underlying theory that the H.P. Delta site is the source of his off-site contamination. (*See* Dhandi Moving Br. [Doc. No. 319] at 8-9.) Gary Lipsius, formerly of the NJDEP’s Bureau of Investigation, Design, and Construction and the NJDEP’s Rule 30(b)(6) witness for the H.P. Delta site, also noted this groundwater flow discrepancy. (*See* Dhandi Moving Br. [Doc. No. 319] at 10.)

Moreover, the NJDEP acknowledged that there are other possible sources of MTBE contamination that could have caused the off-site well contamination. Mr. Lipsius admitted that the NJDEP was “not certain” that the H.P. Delta site was the source of the impacts to the Lancaster Road wells and acknowledged that there are other possible sources of the contamination including two nearby gas stations and a convenience store that used to be a gas station. (*See* Dhandi Moving Br. [Doc. No. 319] at 11.)

In its opposition, Getty was unable to rebut the above referenced issues and, more significantly, offered no affirmative evidence proving the casual nexus, required under the Spill Compensation and Control Act, linking the H.P. Delta site to the Lancaster Road contamination.

Respectfully, it is important to note that Third Party Defendants are not asking this Court to weigh evidence as part of this motion. The facts are undisputed that groundwater does not flow from the H.P. Delta site towards the Lancaster Road area. Further, it is also undisputed that other possible sources of the Lancaster Road contamination have been identified by the NJDEP. Lastly, it is clear that the record is devoid of any facts upon which Plaintiff or Getty can rely upon to link the H.P. Delta site to the Lancaster Road contamination. As a result of the above, Getty is unable to prove that H.P. Delta, Inc. is liable for the off-site Lancaster Road contamination as a matter of law.

Therefore, H.P. Delta respectfully submits that summary judgment should be granted in its favor, thereby dismissing the claims asserted by Defendant, Getty Properties Corp., with regard to the off-site Lancaster Road contamination with prejudice.

Respectfully submitted,

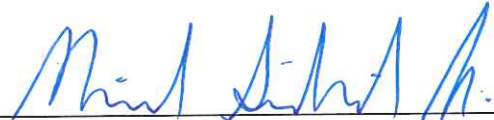
Dated: January 27, 2014

/s/ Stuart J. Lieberman  
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**CERTIFICATION OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of January, 2014, a true and accurate copy of reply brief in further support of the motion for summary judgment filed by Third Party Defendant, H.P. Delta Inc. was served on all counsel of record by the Court's CM/ECF electronic filing service.

Dated: January 27, 2014

  
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